

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Gerald Schweitzberger,
Petitioner-Appellant,

v.

Plymouth County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 12-75-0002
Parcel No. 27-19-477-009

On September 13, 2013, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Gerald Schweitzberger was self-represented. Plymouth County Assessor Bob Heyderhoff represented the Plymouth County Board of Review. Both parties participated by phone. The Appeal Board now, having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Gerald Schweitzberger is the owner of a residential property located at 318 E 4th Street, Kingsley, Iowa. According to the property record card, this property is a one-story frame home built in 1900 with 1260 square-feet of total living area; a floored, unfinished attic area; and a full, unfinished basement. The subject is of average quality grade (4+5) and is in above-normal condition. The subject also has two enclosed porches totaling 248 square feet and a 1440 square-foot, detached frame garage built in 1999. The site is 0.257 acres.

The real estate was classified residential on the January 1, 2012, assessment. It was valued at \$102,460, representing \$15,430 in land value and \$87,030 in dwelling value. There was no change from the 2011 assessment.

Schweitzberger protested the assessment to the Plymouth County Board of Review on the ground that there was a change downward in the value since the last assessment under Iowa Code sections 441.37(1) and 441.35(2). He asserted the correct value was \$73,500. The Board of Review denied his protest.

Schweitzberger then appealed to this Board reasserting his claim.

At hearing, Schweitzberger testified that he went through a divorce in 1999 and had the property appraised at that time. The record contains an appraisal completed by Jodi Ehlers, dated January 26, 1999. Ehlers concludes an opinion of value of \$79,000. Since that appraisal, Schweitzberger testified he constructed a garage. He was concerned that a 2011 appraisal indicated a lower value than the 1999 appraisal, yet his assessment and property taxes keep increasing.

Schweitzberger had the property appraised in 2011 for refinancing purposes. The appraisal was done by Gregory Brummond, of Brummond Appraisal, LLC, Sioux City, Iowa, with an effective date of December 5, 2011. Brummond relied solely on the sales comparison approach. Brummond noted there was very limited sales data available due to stability, low turnover rate, and limited supply of dwellings similar to the subject property. Brummond used three comparable sales, all located in close proximity to the subject property offering similar age and overall style. We note the appraisal indicates fifty percent of the basement is finished, which is not reflected on the property record card. The unadjusted sale prices ranged from \$55,000 to \$83,500, and after nominal adjustments the comparable properties indicated a value range roughly between \$63,000 and \$85,000. Brummond's opinion of value, \$73,500, is roughly the median and average of this range. We find Brummond's appraisal to be the best evidence in the record regarding the fair market value of the subject property as of January 1, 2012. Schweitzberger did not offer any evidence to establish the January 1, 2011 value.

Schweitzberger stated he could not understand why "his taxes kept going up while the value of his property was going down." The powers and duties of the Assessor, the Board of Review and this

Board are limited to the establishment and subsequent review of the assessed value of the subject property. While the assessed value is one factor in the calculation of property taxes, property taxes are also affected by millage rates, levies, or other factors that are ultimately determined by each taxing authority. Each property is likely to be subject to more than one taxing authority.

Plymouth County Assessor Bob Heyderhoff testified for the Board of Review. He testified that in 2011 the sales ratio showed the assessments were 3% low in Kingsley, where the subject property is located. This analysis indicated the assessments of properties in Kingsley were undervalued by 3% compared to the sale prices.

Heyderhoff was critical of Brummond's appraisal, stating "it was done for refinancing," which he asserts typically results in a conservative figure compared to the real market value. We note that Heyderhoff offered no evidence to support this broad assertion, nor did he offer any other evidence of "better" comparable properties. Heyderhoff also noted the appraisal reported second floor finish and some basement finish, which is not reflected in the current assessment.

Lastly, Heyderhoff believes the Brummond appraisal understates the value of the garage, which the assessor identifies as a four-car garage, whereas the appraisal identifies it as a two-car garage. The garage is thirty feet by forty-eight feet; or 1440 total square feet. We note the pictures in the evidence show the garage has only two overhead garage doors. Therefore, despite its size, it may not offer the same utility as a true four-car garage.

Heyderhoff also noted that Schweitzberger has not met his burden of providing both the January 1, 2011, and January 1, 2012, market values. While we agree, we note the January 1, 2012, market value established by Schweitzberger indicates the subject property is assessed for greater than its market value, which we hope is recognized and taken into future consideration by the Assessor. Unfortunately, the only claim that can be considered by this Board lacks the required or supporting evidence.

Ultimately, it is Schweitzberger's burden to demonstrate a downward change in value and we find he failed to provide sufficient evidence to support this claim. While Schweitzberger submitted evidence of the property's value as of January 1, 2012, that alone is not sufficient to succeed on a downward change in value claim under sections 441.35(2) and 441.37(1)(b). Both the January 1, 2011, and January 1, 2012, values are necessary to establish a change in value since the last assessment. *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449, 450 (Iowa 1977). The assessed value cannot be used for this purpose. *Id.*

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value.

§441.21(1)(b). If sales are not available to determine market value then “other factors,” such as income and/or cost, may be considered. § 441.21(2). The property’s assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In a non-reassessment or “interim” year, when the property’s assessment has not changed, a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code §§ 441.35(2), 441.37(1)(b) (2013); *Equitable Life Ins. Co.*, 252 N.W.2d 449. For Schweitzberger to be successful in his claim, he must show a change in value from one year to the next; the beginning and final valuation. *Equitable Life Ins. Co.*, 252 N.W.2d at 450. The assessed value cannot be used for this purpose. *Id.* Essentially, it is not enough for Schweitzberger to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

Schweitzberger provided an appraisal that established the market value of the subject property as of January 1, 2012. However, he did not provide evidence of the subject property’s value as of January 1, 2011. Both values are necessary to establish a change in value and therefore Schweitzberger did not provide sufficient evidence to succeed in his claim.

THE APPEAL BOARD ORDERS the assessment of Gerald Schweitzberger's property located at 318 E 4th Street, Kingsley Iowa, as set by the Plymouth County Board of Review is affirmed.

Dated this 3rd day of October, 2013.

Stewart Iverson
Stewart Iverson, Presiding Officer

Jacqueline Rypma
Jacqueline Rypma, Board Member

Karen Oberman
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>October 3, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>Jean Casper</u>